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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,534	12/05/2003	Eric P. Berg	P686 CON2	7333

7590 10/09/2007  
Medtronic Vascular, Inc.  
Legal Department  
3576 Unocal Place  
Santa Rosa, CA 95403

EXAMINER
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GANESAN, SUBA

ART UNIT	PAPER NUMBER
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3774

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

58

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,534	<b>Applicant(s)</b> BERG ET AL.	
	<b>Examiner</b> Suba Ganesan	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-8,11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9,10 and 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-2, 4-5, 9-10, and 13-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-5, 9-10, 13, 15-16, 18-20, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Miller et al. (U.S. Pat. No. 5,760,200).

1. Sahatjian discloses a delivery catheter, a stent framework and a porous material with a salt of a therapeutic material (see figs. 4-6 and col. 9 lines 21-34). The stent framework is made of a metal (nitinol) and can be self expanding (col. 10 lines 7-10). The stent framework is a combination of metallic and polymeric elements; note that examiner is considering a polymeric (hydrogel) coating on a metallic stent to be a framework comprising metallic and polymeric elements. The stent can further comprise a bioadsorbable coating (col. 9 lines 15-20). With respect to claims 13 and 15, note that examiner is further considering a coating to be a film. Sahatjian further discloses the

use of heparin salt as a therapeutic salt (col. 8 lines 17-30 and col. 10 lines 1-6).

However, Sahatjian does not *specifically* disclose the heparin salt being water-insoluble.

Miller teaches the use of a water insoluble polyanionic polysaccharide (see abstract), which includes heparin (col. 3 lines 9-16) as a water insoluble composition in the form of a gel or film (col. 3 line 17-col. 4 line 4). Therefore it would have been obvious to one of ordinary skill in the art to modify heparin salt of Sahatjian with a water insoluble heparin composition as taught by Miller for the purpose of providing a substrate that is washable in water before use (col. 4 lines 36-38).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Miller et al. (U.S. Pat. No. 5,760,200), further in view of Hunter (U.S. Pat. No. 5716981).

4. Sahatjian in view of Miller is explained supra. However, the combination does not disclose a coating of silicone or a radioactive salt. Hunter teaches the coating of stents (col. 1 lines 13-18) with radioactive materials (col. 15 lines 19-30). The stent material can be silicone (col. 16 lines 31-55). Therefore it would have been obvious to one of ordinary skill in the art to modify the stent of Sahatjian to include silicone for the

purpose of creating a less rigid stent to minimize local tissue trauma and facilitate insertion within the body. It would have further been obvious to one of ordinary skill in the art at the time of the invention to modify the therapeutic salt of Sahatjian to include a radioactive material as taught by Hunter for the purpose of providing anti-angiogenic therapy at a specific location.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Miller et al. (U.S. Pat. No. 5,760,200), further in view of Tang et al. (U.S. Pat. No. 4920203).

6. Sahatjian in view of Miller is explained supra. However the combination does not disclose the therapeutic salt being a barium salt. Tang teaches the use of Barium salts for a therapeutic coating on stents (col. 20 lines 41-62). Therefore it would have been obvious to one of ordinary skill in the art to modify the therapeutic salt of Sahatjian to be Barium as taught by Tang for the purpose of creating a radiopaque stent.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suba Ganesan whose telephone number is 571-272-3243. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SDG 9/24/2007

**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

A handwritten signature in cursive script, reading "Brian E. Pellegrino".